Filed 11/17/20 In re M.L. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re M.L., a Person Coming Under the Juvenile Court Law.	B299898
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. NICOLE L. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. 19CCJP03704)

APPEALS from findings and orders of the Superior Court of Los Angeles County, Robin R. Kesler, Juvenile Court Referee, Kristen Byrdsong, Juvenile Court Commissioner. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant Nicole L.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant Robert D.

Mary C. Wickham, County Counsel, and Kim Nemoy, Acting Assistant County Counsel, for Plaintiff and Respondent.

Nicole L. (mother) and Robert D. (father) appeal from jurisdictional and dispositional orders of the juvenile court declaring their son, M., a juvenile court dependent and ordering mother and father to participate in family maintenance and reunification services. Mother contends that (1) substantial evidence did not support the juvenile court's findings that mother's marijuana use and violence between mother and the maternal grandmother put M. at substantial risk of serious physical harm as described by Welfare and Institutions Code[1] section 300, subdivisions (a) and (b), and (2) the juvenile court abused its discretion by entering a court-supervised case plan that required mother to drug test, undergo a psychological evaluation, and participate in individual counseling. Father contends that substantial evidence did not support the jurisdictional findings as to him because he was not living with and did not have unmonitored contact with M., and the juvenile court erred by failing to order the Los Angeles County Department of Children and Family Services (DCFS) to interview the paternal grandmother about M.'s possible Indian ancestry. We find no prejudicial error, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

M. was born to mother and father in January 2013. The parents ended their relationship in 2016; subsequently, mother obtained a family law order giving her sole legal and physical custody of M. Father was granted monitored visits with M. each weekend.

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[1] All subsequent undesignated statutory references are to the Welfare and Institutions Code.

A. Father's Prior Dependency History

After father and mother ended their relationship, father had two children with Stephanie M. The youngest child tested positive for amphetamines at her birth in April 2018, and in August 2018, the juvenile court sustained allegations that father and Stephanie had a history of engaging in violent altercations in the children's presence, father had a history of illicit drug use and was a current abuser of marijuana, Stephanie had a history of substance abuse and was an abuser of methamphetamines, amphetamines, and marijuana, and Stephanie gave birth to a child who tested positive for amphetamines. The court ordered the children removed from father and Stephanie, and ordered DCFS to provide family reunification services to both parents.

B. Present Proceeding

DCFS received a referral alleging possible abuse and neglect of M. in May 2019, after mother was arrested for pepper-spraying the maternal grandmother in M.'s presence. A children's social worker (CSW) interviewed mother at the family's home, where mother and M. lived with the maternal grandmother and great-grandmother. Mother said she felt overwhelmed at home because the maternal grandmother and great-grandmother frequently yelled at her and criticized her parenting. She explained that the pepper-spray incident occurred after grandmother yelled at mother to close her bedroom window, but mother did not want to because of the heat. Mother held up a bottle of pepper-spray, and "before she realized it she had pepper sprayed [maternal grandmother]." M. was present during the incident. Grandmother called law enforcement, and mother was jailed for two days.

During the CSW's interview with mother, the great-grandmother began yelling that she was tired of mother not doing anything around the house or paying rent, and the grandmother attempted to engage M. in the argument among the adults, instructing M., "[T]ell [the CSW] how mommy hurts you," and "Tell [the CSW] who does your laundry." The CSW said M. "was present during this entire argument and it appeared as if [grandmother and great-grandmother] did not care as they continued to yell after CSW told them numerous times not to do this in front of [M.] Initially, [M.] seemed unfazed by this, but as [great-grandmother] and [grandmother] began to yell even more, [M.] covered his ears."

Mother said she and the grandmother had had a poor relationship for some time, but mother remained in the grandmother's home because she had nowhere else to live. She disclosed that she had been diagnosed with anxiety in 2016, but said she was not taking the anti-anxiety medication she had been prescribed. To help her manage pain from a back injury, she smoked marijuana when M. was at school or asleep. She denied any other drug use.

A review of police call logs revealed that officers had been called to the family home more than 10 times in 2019. The calls appeared to have been initiated by both mother and grandmother, and many involved conflict between them. One such call from early April 2019 concerned mother's report that grandmother assaulted mother while she was holding M.

Father reportedly drug tested inconsistently in his open DCFS case and, when he did test, was positive for marijuana. Father was incarcerated for a month in April, and he failed to

provide DCFS with evidence that he had enrolled in services ordered by the court in the companion case.

On June 11, 2019, DCFS filed a juvenile dependency petition pursuant to section 300, subdivisions (a), (b), and (j). It alleged that mother and maternal grandmother engaged in violent and assaultive behavior in M.'s presence (counts a-1, b-1); mother had a history of substance abuse and was a current abuser of marijuana (count b-2); and father was a current abuser of marijuana and engaged in domestic violence with his current girlfriend in the presence of M.'s half-siblings, as a result of which those children had been declared juvenile court dependents (counts a-2, b-3, b-4, j-1, j-2). On June 12, the court ordered M. detained from father and released to mother under DCFS supervision.

C. Jurisdiction and Disposition

In July 2019, DCFS reported that M.'s half-siblings remained in foster care. The juvenile court had found father in partial compliance with his case plan, and a further hearing was set for August. Father had drug tested in the present proceeding just once, in July, when he tested positive for marijuana. Father admitted continuing to use marijuana, but said he was never under the influence while visiting M. He had failed to test in the case involving M.'s half-siblings because "I don't have time to go do that." M. reported having seen father smoke "this brown paper stuff that you light up."

Mother reported she had been arrested again and currently was in jail as a result of another incident with grandmother. Mother explained that grandmother had criticized her parenting and threatened her, and when mother tried to take M. out of the room, grandmother threatened to call the police and mother had

"an outburst." When the police arrived, they arrested mother for violating a restraining order.[2] The CSW encouraged mother to find other housing in order to avoid further conflict with grandmother, but mother said she planned to return to grandmother's home after her release from jail because she helped care for the maternal great-grandmother and received help caring for M. Mother also said she had stopped smoking marijuana in April 2019, and was instead using yoga and meditation to manage her anxiety.

Mother participated in a child and family team meeting on August 1, 2019. The CSW reported that mother showed some insight and said she wanted to stabilize her relationship with grandmother so they could effectively coparent M. Mother was unwilling to enroll in services unless she was ordered by a court to do so, however.

DCFS assessed that M. could safely remain in mother's care, noting that mother had been forthcoming about the conflict with grandmother, her history of marijuana use, and her anxiety diagnosis. While DCFS was concerned about the ongoing tension between mother and grandmother, there were "no immediate safety concerns that warrant detention of the child from mother at this time." DCFS assessed that M. could not be safely returned to father's care, however, noting that father had not consistently drug-tested in his younger children's case, had tested positive for marijuana in the present case, had not visited M. in approximately six months, and continued to engage in criminal behavior leading to incarcerations.

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[2] The appellate record does not include any further information about a restraining order.

At the August 7, 2019 jurisdiction and disposition hearing, M.'s counsel asked the court to sustain count b-1 (domestic violence between mother and grandmother) and dismiss all remaining counts. Mother's counsel asked that all counts against mother be dismissed because there was no evidence mother had been under the influence of marijuana while caring for M., she had been cooperative with DCFS, and she had consented to services. Father's counsel asked that father be dismissed from the petition because there was no nexus between father's actions and a risk of harm to M.

Counsel for DCFS asked the court to sustain the petition, urging that the constant antagonism and violence between mother and grandmother, as well as mother's marijuana use, put M. at risk of harm. As to father, counsel noted that police call logs indicate that mother had allowed father to take M. unsupervised to father's home in Victorville in June 2019; thus, the family law order was not sufficient to protect M. from risk of harm from father. Further, there was no evidence that father had addressed the issues from his companion case, and thus M. was at risk by virtue of the (j) counts.

The court sustained counts a-1 (violent altercations between mother and grandmother), b-1 (mother's marijuana use), j-1 (father's marijuana use), and j-2 (domestic violence between father and his girlfriend), and dismissed the remaining counts. The court then declared M. a juvenile court dependent pursuant to section 300, subdivisions (a), (b), and (j), found by clear and convincing evidence that there would be a substantial risk to M. if he were returned to father's physical custody, and ordered M. placed with mother. Mother was ordered to submit to six drug tests, enroll in a parenting class, undergo a psychological

assessment, and participate in individual counseling. Father was ordered to drug test, enroll in domestic violence and parenting classes, and participate in individual counseling.

Mother and father timely appealed.

CONTENTIONS

Mother contends the jurisdictional findings were unsupported by the evidence, and the dispositional order was an abuse of the juvenile court's discretion.

Father contends there was no substantial evidence that his conduct put M. at risk of harm, and the juvenile court failed to ensure that DCFS made an adequate inquiry under the Indian Child Welfare Act (ICWA).

DISCUSSION

I.

Standard of Review

We review a juvenile court's jurisdictional findings for substantial evidence. " 'In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations." ' " (*In re I.J.* (2013) 56 Cal.4th 766, 773.) " ' "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.]" ' " (*Ibid.*) We review the juvenile court's disposition orders for an abuse of discretion (*In re K.T.* (2020) c, 25; *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 652), and we review for substantial

evidence the findings of fact on which dispositional orders are based (*In re K.T.*, at p. 25; *In re Francisco D.* (2014) 230 Cal.App.4th 73, 80).

Where the relevant facts are undisputed, we review independently whether the requirements of ICWA have been satisfied. (*In re A.M.* (2020) 47 Cal.App.5th 303, 314.) Failure to comply with ICWA's inquiry requirement is subject to harmless error analysis. (*In re N.E.* (2008) 160 Cal.App.4th 766, 769-770.)

II.

Mother's Appeal

A. The Jurisdictional Findings as to Mother Were Supported by Substantial Evidence

Mother contends the court's jurisdictional findings based on her conduct were not supported by substantial evidence because there was no evidence that the pepper-spray incident put M. at significant risk of harm or that mother currently abused marijuana. For the reasons that follow, the contentions are without merit.

1. Domestic Violence Between Mother and Grandmother

Section 300, subdivision (a) provides that a child is within the jurisdiction of the juvenile court if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent." DCFS has the burden of proving by a preponderance of the evidence that a child is a dependent of the court under section 300. (§ 355, subd. (a); *In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

It is well established the domestic violence between the adults in a household puts children at risk of serious physical

harm. (E.g., *In re E.B.* (2010) 184 Cal.App.4th 568, 576, disapproved on other grounds in *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1003, fn. 4 [" '[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.' [Citation.] Children can be 'put in a position of physical danger from [adult] violence' because, 'for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg. . . .' "]; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194, overruled on other grounds in *In re R.T.* (2017) 3 Cal.5th 622, 628 ["domestic violence in the same household where children are living *is* neglect; it is a failure to protect [children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it"].) Thus, exposing a child to domestic violence may trigger jurisdiction under section 300, subdivision (a) if the violence places the child in harm's way and is likely to continue. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598–599; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717; *In re M.M.* (2015) 240 Cal.App.4th 703, 720 [engaging in domestic violence in close proximity to a child supports a jurisdictional finding under § 300, subd. (a)].)

In the present case, it is undisputed that there was ongoing conflict between mother and grandmother that had resulted on more than one occasion in physical violence between them. M. was present and at risk of being injured during at least two of these incidents—in May 2019, when grandmother reportedly assaulted mother while she was holding M., and in June 2019, when mother pepper-sprayed grandmother in M.'s presence.

Because mother was unable or unwilling to move out of grandmother's home, there was a substantial risk of ongoing violence in the household. The juvenile court therefore did not err in concluding that the domestic violence in the household gave rise to dependency jurisdiction under section 300, subdivision (a).

Although mother admits there was at least one violent incident between her and grandmother, she contends that incident did not support a section 300, subdivision (a) finding because there was no evidence the violence was intentional. She notes that both she and the maternal great-aunt said her use of the pepper-spray was accidental: Mother told the CSW she "held a bottle of pepper spray up and before she realized it she had pepper sprayed [grandmother]," and the maternal great-aunt said mother had tried to scare grandmother with the pepper-spray "but did not intend to press down to release it." Thus, mother urges, the juvenile court should not have concluded the domestic violence was "nonaccidental" within the meaning of section 300, subdivision (a).

In so contending, mother misapprehends our standard of review. "Under the deferential substantial evidence standard of review, findings of fact are liberally construed to support the judgment or order and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings. [Citation.]" (*Powell v. Tagami* (2018) 26 Cal.App.5th 219, 231.) In this case, the juvenile court did not credit mother's contention that her use of pepper-spray was accidental, and it is not within our province to reach a different conclusion. (E.g., *People v. Albillar* (2010) 51 Cal.4th 47, 60 [" 'A reviewing court neither reweighs evidence

nor reevaluates a witness's credibility' "]; *Powell v. Tagami*, at p. 231 ["It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility"].)

2. Mother's Marijuana Use

Because we have concluded that the domestic violence between mother and grandmother provided a basis for jurisdiction under section 300, subdivision (a), we need not consider whether mother's marijuana use provided an alternative basis for jurisdiction under section 300, subdivision (b). As our Supreme Court has held, "an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492; see also *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 ["As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate"]; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330 [declining to address remaining allegations after one allegation found supported].) We therefore do not address mother's challenge to the juvenile court's finding as to count b-2 of the petition.

B. The Dispositional Order as to Mother Was Not an Abuse of Discretion

Mother contends the trial court abused its discretion by entering a court-supervised case plan because informal supervision would have been sufficient to protect M. Mother further contends the portion of the dispositional order requiring her to drug test and undergo a psychological evaluation and counseling were an abuse of discretion. The claims are without merit.

As a preliminary matter, we note that mother did not challenge the entry of a dispositional order or the individual counseling requirement in the juvenile court. She therefore forfeited those objections on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 [a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court]; *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 686 [" 'A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court' "].)

In any event, we conclude on the merits that the dispositional order was well within the juvenile court's discretion. If a juvenile court finds that the child is a person described by section 300, it has two options: It "may order and adjudge the child to be a dependent child of the court" or "it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker." (§ 360, subds. (d), (b).) In the present case, DCFS reported that although mother voluntarily participated in a child and family team meeting on August 1, 2019, she was unwilling to enroll in services unless she was ordered by a court to do so. Thus, the juvenile court was not required to conclude, as mother suggests, that M. would have been adequately protected by voluntary (rather than mandatory) supervision.

With regard to the specific elements of mother's case plan, we note that the juvenile court has broad discretion when fashioning orders for the well-being of a child. (§ 362, subd. (a) [the court "may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the

child"].) Here, as we have said, mother had admitted to a history of anxiety for which she was not receiving treatment, had shown herself prone to violent outbursts when provoked by the maternal grandmother, and had admitted using marijuana to manage pain. Under these circumstances, orders requiring drug testing, a psychological assessment to guide treatment, and individual counseling to assist with anger management and improve parenting and communication skills were appropriate.

III.

Father's Appeal

A. Substantial Evidence Supported the Juvenile Court's Jurisdictional Findings as to Father

Father challenges the juvenile court's findings as to counts j-1 and j-2, which alleged that M. came within the court's jurisdiction because of father's conduct. As to those counts, father contends the juvenile court's findings are not supported by substantial evidence.

We need not address father's substantial evidence challenge to counts j-1 and j-2 because the juvenile court had jurisdiction over M. based on the counts relating to mother. It is well established that "a jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [him or] her within one of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent. [Citation.]" (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; accord, *In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1491–1492.) Thus, "[a]s a result of this focus on the child, it is necessary only for the court to find that one parent's conduct has created circumstances triggering

section 300 for the court to assert jurisdiction over the child." (*In re I.A.*, at p. 1491.)

In this case, the findings relating to mother provide sufficient grounds for affirming the declaration of dependency as to M. Because we have found substantial evidence supported count a-1, any decision we might render on the allegations involving father will not result in a reversal of the court's order asserting jurisdiction. (See *In re I.A.*, *supra*, 201 Cal.App.4th 1492.) We therefore decline to reach father's substantial evidence challenge to counts j-1 and j-2 of the petition.

B. The Juvenile Court Did Not Prejudicially Err by Failing to Order DCFS to Contact the Paternal Grandmother Concerning M.'s Possible Indian Ancestry

At the disposition hearing, father submitted an ICWA-020 form stating that he "may" have Indian ancestry because "[paternal grandmother] has stated she has Indian ancestry." On June 19, 2019, the court ordered DCFS to make appropriate inquiries to determine whether ICWA applied.

In the July 25, 2019 jurisdiction/disposition report, DCFS reported it had followed up with father, who said he did not have information as to which of his relatives might have Indian ancestry or to which tribe his family might be connected. The CSW "encouraged [father] to update his CSW if he learns of any information that would indicate he has Native American ancestry."

Father contends the trial court prejudicially erred in failing to require DCFS to follow up with other members of his family, including the paternal grandparents, on father's claim of Indian

ancestry. We agree that further ICWA inquiry was warranted in this case, but we find no prejudicial error.

ICWA was enacted in 1978 " 'to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture. . . .' (25 U.S.C. § 1902.)" (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7–8.) The minimum standards established by ICWA include the requirement of notice to Indian tribes in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights " 'where the court knows or has reason to know that an Indian child is involved.' " (*Ibid.*)

"[T]he burden of coming forward with information to determine whether an Indian child may be involved and ICWA notice required in a dependency proceeding does not rest entirely—or even primarily—on the child and his or her family." (*In re Michael V.* (2016) 3 Cal.App.5th 225, 233.) Rather, "[j]uvenile courts and child protective agencies have 'an affirmative and continuing duty to inquire' whether a dependent child is or may be an Indian child." (*Ibid.*; see also *In re Isaiah W.*, *supra*, 1 Cal.5th at pp. 9–11; § 224.2, subd. (a).) The duty to inquire "begins with the initial contact" and requires the court "[a]t the first appearance . . . of each party" to "ask each participant present in the hearing whether the participant knows or has reason to know that the child is an Indian child." (§ 224.2, subds. (a), (c).) If that inquiry provides "reason to believe" that an Indian child is involved in a proceeding, the social worker "shall make further inquiry regarding the possible Indian status

of the child." (*Id.*, subd. (e).) If following that further inquiry the court has "reason to know" an Indian child is involved, notice shall be provided to the child's tribe of any hearing that may culminate in an order for foster care placement, termination of parental rights, or preadoptive or adoptive placement. (§ 224.3.)

In the present case, father advised the court at the detention hearing that the paternal grandmother had said she had Indian ancestry. The paternal grandmother was in regular contact with DCFS because father's two youngest children had been placed in her care. Accordingly, the juvenile court should have directed DCFS to inquire whether the paternal grandmother knew or had reason to know that M. was an Indian child. (§ 224.2, subd. (c), (e).)

Although the juvenile court thus erred in failing to direct DCFS to inquire of the paternal grandmother regarding M.'s possible Indian ancestry, DCFS's failure to do so was not reversible error. ICWA inquiry is not an end in itself, but rather is a predicate to determining whether there is a tribe or tribes that are entitled to notice of the dependency proceeding. (§ 224.3, subd. (a) ["If the court, a social worker, or probation officer knows or has reason to know . . . that an Indian child is involved, notice [to the child's tribe] pursuant to Section 1912 of the federal Indian Child Welfare Act of 1978 (25 U.S.C. Sec. 1901 et seq.) shall be provided for hearings"].) However, as DCFS correctly notes, notice under ICWA is required only when an Indian child is removed from a parent, *not* when the child remains in a parent's physical custody. (§ 224.2, subd. (f) [requiring ICWA notice if agency is "seeking foster care placement"]; see also *In re M.R.* (2017) 7 Cal.App.5th 886, 904 ["ICWA and its attendant notice requirements do not apply to a proceeding in which a

dependent child is removed from one parent and placed with another"]; *In re J.B.* (2009) 178 Cal.App.4th 751, 758 ["ICWA does not apply to a proceeding to place an Indian child with a *parent*"]; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 14 ["[b]y its own terms, [ICWA] requires notice only when child welfare authorities seek permanent foster care or termination of parental rights; it does not require notice *anytime* a child of possible or actual Native American descent is involved in a dependency proceeding"].)

M. has remained in mother's custody throughout these proceedings. Accordingly, tribal notice would not have been required even had it been determined that there was reason to know M. was an Indian child.

Father acknowledges the holdings of *In re M.R.*, *In re J.B.*, and other similar cases, but he urges these cases were incorrectly decided. We disagree. For the reasons articulated in *In re M.R.*, *In re J.B.*, and *In re Alexis H.*, we conclude that ICWA's notice provisions do not apply when a child remains in a parent's physical custody. Accordingly, the juvenile court's failure to require DCFS to follow up with the paternal grandmother concerning M.'s possible Indian ancestry was not reversible error.

DISPOSITION

The jurisdictional and dispositional findings and orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.